

# SouthEast Telephone

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December 1, 2008

The Honorable Deborah Tate  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street., SW  
Washington, DC 20544

Re: *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36; *Numbering Resource Optimization*, CC Docket No. 99-200

Dear Commissioner Tate,

SouthEast Telephone has long appreciated the perspective and dedication to rural competition and broadband that guided you during your time as a Director of the Tennessee Regulatory Authority and Commissioner on the Federal Communications Commission. We are filing this *Ex Parte* because of the significant concerns we have with the recently published Order on Remand and Report and Order and Further Notice of Proposed Rulemaking addressing universal service and intercarrier compensation reform.<sup>1</sup> As we explain below, SouthEast provides a unique perspective on these issues because it is attempting to deploy broadband services in rural areas of Kentucky through local ownership, private investment and entrepreneurial innovation. In short, we are *exactly* the type of rural initiative that the Commission should encourage. Unfortunately, the *Comprehensive Notice* is structured to force a voluntary provider like SouthEast to exit a rural market in order to entice AT&T (formerly BellSouth Kentucky) to enter. We ask that you consider the modest changes we propose below to enable SouthEast – with its local focus and local jobs – to continue to compete in rural Kentucky.

SouthEast Telephone is located in Pikeville, Kentucky, a small town of approximately 7,000 in the Appalachian Mountains of Eastern Kentucky.<sup>2</sup> We are focused on providing local, long distance, and broadband Internet services to residential and small businesses in rural Kentucky. SouthEast was developed by a group of *local* entrepreneurs that are not only interested in bringing the benefits of broadband to our communities, but needed technology jobs as well.<sup>3</sup> Our markets are sparsely populated, mountainous, and relatively costly to serve. Despite the obstacles that face these rural markets, SouthEast currently serves over 30,000 customers. SouthEast business plan is to deploy broadband in these areas by developing a fiber-feeder network to AT&T remote terminals where SouthEast will interconnect with sub-loops.<sup>4</sup>

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<sup>1</sup> See Commission's Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, released November 5, 2008 ("*Comprehensive Notice*").

<sup>2</sup> Source: 2000 Census. Pikeville is the county seat of Pike County (which is the largest county in Kentucky in terms of land area), and is the birthplace of Patty Loveless and Dwight Yokum.

<sup>3</sup> SouthEast Telephone supports over 200 employees.

<sup>4</sup> In these remote terminals, we are deploying Broadband Loop Carrier systems to offer broadband Internet access and voice service using a MetaSwitch soft-switch. Our unique



SouthEast is able compete today and deploy its broadband network in part by reinvesting revenues it receives through intercarrier payments for access and universal service support. In both instances, the *Comprehensive Notice* would deprive SouthEast of these revenues without any offsetting sources of revenue and/or cost savings. Rather than offer new inducements (or threats) to incumbents in order that they may expand the deployment of broadband services to rural markets, the Commission should take the following simple steps that will enable (and expand) SouthEast's ability to voluntarily deploy its broadband network.

\* **Retain SouthEast's access to USF Support.** Appendix C of the *Comprehensive Notice* proposes to eliminate SouthEast's USF support and then restore that support available *only* if AT&T Kentucky chooses areas served by SouthEast in which to conduct a reverse auction.<sup>5</sup> The reverse auction structure in Appendix C has it all backwards by granting to the *incumbent* when and where a reverse auction is appropriate. AT&T Kentucky, having had all the USF support in its territory awarded to it through regulatory fiat, however, has no incentive to initiate a reverse auction except where support may be deficient or where it believes no competitor would bid. Only *entrants* have the incentive to initiate a reverse auction where less support may be needed, but the Appendix C proposal contains no provision that would enable an entrant to initiate a proposed auction.<sup>6</sup> SouthEast does not have the resources to detail all the flaws associated with a reverse auction system, which to us represents a triumph of ideology over common sense. What matters most is that the Commission make clear that companies such as SouthEast retain the opportunity to deploy broadband in rural areas, under conditions no more difficult than the incumbent. Specifically, SouthEast recommends that any Commission decision enable SouthEast to retain access to USF support at existing levels, subject to a reasonable cost showing that justifies the support.

\* **Retain the Rural Exemption.** The *Comprehensive Notice* is silent with respect to the important rural exemption that permits a carrier like SouthEast serving rural markets to charge the NECA rate.<sup>7</sup> In any decision that the Commission reaches concerning intercarrier compensation, the Commission should make clear that it is retaining the rural exemption that addresses the unique difficulties associated with serving rural markets.

\* **Enforce Section 271's Requirement for Just and Reasonable Rates.** The *Comprehensive Notice* ignores that one of the key barriers to rural broadband deployment by competitors are the excessive rates imposed on competitors leasing facilities from Bell Operating Companies in rural markets to provide service. Like any other provider, broadband investment is an extension of SouthEast's provision of local telecommunications services which provide both the revenue stream and the customer base needed to attract capital and deploy new technology. SouthEast has previously demonstrated that AT&T Kentucky's rate for local switching in Kentucky is 474% higher than the Commission's estimate of cost.<sup>8</sup> The *Comprehensive Notice* recognizes that cost is the

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engineering efforts have allowed us to fill gaps in availability that have not been offered broadband service in the past.

<sup>5</sup> *Comprehensive Notice*, Appendix C at 31.

<sup>6</sup> We note that the reverse auction process in Appendix A is similarly flawed in that only the incumbent may initiate a reverse auction (although CETCs have the opportunity to retain support based on a cost showing). In contrast, Appendix B requires that a reverse auction be used in all instances to determine support. As a practical matter, before the Commission adopts *any* form of reverse auction as a national policy, it should at least conduct a trial to determine whether its ideas are feasible in the real world.

<sup>7</sup> C.F.R. § 61.26(e).

<sup>8</sup> See Comments of SouthEast Telephone, Inc. and Momentum Telecom, Inc., In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, Federal Communications Commission, WC Docket No. 05-337 and CC Docket No. 96-45, April 17, 2008 at 7.

ordinary basis to judge the just and reasonableness of rates,<sup>9</sup> but does not appreciate, in any manner whatsoever, the direct and damaging link between rural competition and the rates imposed by incumbents for those elements required by Section 271. SouthEast recognizes that this is not the place to reform Section 271 prices and does not ask for that relief. This is the place, however, for the Commission to signal the seriousness of its role under Section 271 and the importance of just and reasonable Section 271 prices to the rural marketplace.

Commissioner Tate, SouthEast commends you for your time on the Commission and appreciates the opportunity to highlight these few critical areas. We hope that in these final days on the Commission, you are able to establish a stronger foundation for the competitive deployment of broadband in rural markets.

Sincerely,

A handwritten signature in purple ink, appearing to read "Darrell Maynard", with a large, sweeping loop at the end.

Darrell Maynard

cc: Chairman Kevin Martin  
Commissioner Michael Copps  
Commissioner Robert McDowell  
Commissioner Jonathan Adelstein  
Daniel Gonzalez  
Amy Bender  
Scott Deutchmann  
Nicholas G. Alexander  
Scott Bergman  
Greg Orlando

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<sup>9</sup> See *Comprehensive Notice* at Appendix A ftn. 551 (and ftn. 542, Appendix C): "We recognize that 'the just and reasonable rates required by Sections 201 and 202 . . . must ordinarily be cost-based, absent a clear explanation of the Commission's reasons for a departure from cost-based ratemaking.'"